

adulterated while held in original packages did not show that it was adulterated when introduced into or while in interstate commerce.

"Appellant cites, in support of its contention, § 10 of the Food and Drug Act of 1906,⁹ 21 U. S. C. A. § 14, which provided that 'any article of food * * * that is adulterated * * * and is being transported from one State * * * to another for sale, or, having been transported, remains * * * in original unbroken packages * * * shall be liable to be proceeded against * * * and seized for confiscation by a process of libel for condemnation.' This proceeding was not brought, and could not have been brought, under § 10 of the Food and Drug Act of 1906, 21 U. S. C. A. § 14, for that section was repealed¹⁰ long before this proceeding was brought. As stated above, this proceeding was brought under § 304 (a) of the Federal Food, Drug and Cosmetic Act, 21 U. S. C. A. § 334 (a). The quoted provision of § 10 of the Food and Drug Act of 1906, 21 U. S. C. § 14, is not in § 304 (a) of the Federal Food, Drug and Cosmetic Act, 21 U. S. C. A. § 334 (a), and should not be read into it by construction.

"Whether Congress could have provided in § 304 (a) of the Federal Food, Drug and Cosmetic Act, 21 U. S. C. A. § 334 (a), for the condemnation of any article of food that is adulterated while held in original packages after being transported in interstate commerce need not be considered, since Congress did not, in fact so provide.

"Appellant says that administrative officers charged with the duty of enforcing § 304 (a) of the Federal Food, Drug and Cosmetic Act, 21 U. S. C. A. § 334 (a), have interpreted it as providing for the condemnation of any article of food that is adulterated while held in original packages after being transported in interstate commerce. Being clearly erroneous, that interpretation need not and should not be followed by the courts.¹¹

"Appellant has cited no court decision supporting its contention, and we have found none. We conclude, as did the court below, that the libel did not state facts sufficient to warrant condemnation of the food.

"Decree affirmed."

On February 10, 1947, the Government's petition for the writ of certiorari to the United States Supreme Court was denied.

13037. Adulteration and misbranding of spaghetti and macaroni. U. S. v. California Vulcan Macaroni Co. and Augustin Bacigalupi. Pleas of nolo contendere. Total fines \$2,250. (F. D. C. No. 24509. Sample Nos. 75335-H, 75729-H, 32006-K.)

INFORMATION FILED: March 18, 1948, Northern District of California, against the California Vulcan Macaroni Co., a corporation, San Francisco, Calif., and Augustin Bacigalupi, president.

ALLEGED VIOLATIONS: The defendants were charged with giving to various firms false guaranties, as follows: On or about February 2, 1944, the defendants gave to Theo H. Davies & Co., San Francisco, Calif., a guaranty to the effect that any food, drug, or cosmetic sold or delivered by the defendants to the holder of the guaranty would comply with the Federal Food, Drug, and Cosmetic Act. On or about May 6 and July 15, 1947, respectively, the defendants gave similar guaranties to Juillard Fancy Foods and Alexander & Baldwin, Ltd., of San Francisco, Calif. On or about April 10, and May 6, 1947, respectively, the defendants sold and delivered to Theo H. Davies & Co., and Juillard Fancy Foods, quantities of spaghetti which was adulterated; and on or about September 19, 1947, the defendants sold and delivered to Alexander & Baldwin, Ltd., a quantity of macaroni which was misbranded.

The products so sold, delivered, and guarantied by the defendants were shipped by the holders of the respective guaranties from the State of California to the Territory of Hawaii on or about April 17, May 13, and October 23, 1947.

⁹ Act of June 30, 1906, c. 3915, 34 Stat. 768, as amended.

¹⁰ See § 902 (a) of the Federal Food, Drug and Cosmetic Act, 52 Stat. 1059, and notes appended to 21 U. S. C. A., §§ 14 and 392.

¹¹ Cf. *United States v. Tanner*, 147 U. S. 661; *United States v. Missouri Pac. R. Co.*, 278 U. S. 269; *Texas & Pac. R. Co. v. United States*, 289 U. S. 627; *Koshland v. Helvering*, 298 U. S. 441; *Estate of Sanford v. Commissioner*, 308 U. S. 39; *Neuberger v. Commissioner*, 311 U. S. 83; *Interstate Commerce Commission v. Railway Labor Executives Assn.*, 315 U. S. 373; *Jewell Ridge Coal Corp. v. Local No. 6167*, 325 U. S. 161.

LABEL, IN PART: "Royal Spaghetti Semolina," "Royal Brand * * * Semolina Spaghetтини," or "Royal Vitamin Enriched Ingredients: Semolina, Vitamin B₁, Vitamin B₂, Niacin, Iron pyrophosphate. Macaroni * * * Four ounces when cooked supply the following of adult minimum daily requirements: Vitamin B₁ 50% Vitamin B₂ 15% Iron 32.5% and 4.0 mg. Niacin."

NATURE OF CHARGE: Spaghetti. Adulteration, Section 402 (a) (3), the product consisted in part of a filthy substance by reason of the presence of insect fragments; and, Section 402 (a) (4), it had been prepared and packed under insanitary conditions whereby it may have become contaminated with filth.

Enriched macaroni. Misbranding, Section 403 (g) (1), the product purported to be and was represented as enriched macaroni, and it failed to conform to the definition and standard of identity for enriched macaroni since it contained in each pound less than 4 milligrams of thiamine and less than 13 milligrams of iron; and, Section 403 (a), the label statements "Comparative Food Values of Macaroni and Other Foods Calories Lean steak . . . 950, Potatoes . . . 365, Parsnips . . . 295, Beets . . . 230, Carrots . . . 195, Onions . . . 190, String beans . . . 170, Turnips . . . 160, Cabbage . . . 115, Lettuce . . . 65, Macaroni . . . 1665," were misleading, since the statements represented and suggested that macaroni had the highest food value of any of the foods mentioned, whereas macaroni does not have the highest food value of any of the foods mentioned. Further misbranding, Section 403 (a), the label statement "Four ounces when cooked supply the following of adult minimum daily requirements: Vitamin B₁ 50% Vitamin B₂ 15% Iron 32.5% and 4.0 mg. Niacin" was false and misleading, since four ounces of the article would not supply the stated proportions of the minimum daily requirements of vitamin B₁, vitamin B₂, and iron, and would not supply four milligrams of niacin.

DISPOSITION: April 14, 1948. Pleas of nolo contendere having been entered, the defendants were each fined \$1,125, a total of \$2,250.

13038. Adulteration of macaroni. U. S. v. B. Filippone & Co., a corporation, and John B. Filippone. Pleas of guilty. Corporation fined \$1,500; individual fined \$150. (F. D. C. No. 24072. Sample Nos. 87572-H, 87573-H, 87745-H, 87775-H.)

INFORMATION FILED: January 13, 1948, District of New Jersey, against B. Filippone & Co., Passaic, N. J., and John B. Filippone, secretary.

ALLEGED SHIPMENT: On or about June 10, 1947, from the State of New Jersey into the State of New York.

LABEL, IN PART: "La Perla' Macaroni Products," or "Puccini Brand Macaroni"; (on some packages) "Manufactured by National Macaroni Mfg. Co. Garfield, N. J."

NATURE OF CHARGE: Adulteration, Section 402 (a) (3), the product consisted in part of a filthy substance by reason of the presence of rodent hair fragments and insect fragments; and, Section 402 (a) (4), it had been prepared under insanitary conditions whereby it may have become contaminated with filth.

DISPOSITION: March 3, 1948. Pleas of guilty having been entered, the corporation was fined \$1,500 and the individual defendant was fined \$150.

13039. Adulteration and misbranding of macaroni and noodle products. U. S. v. V. Viviano & Brothers Macaroni Manufacturing Co., Frank P. Viviano, and Peter R. Viviano. Pleas of nolo contendere. Fine of \$300 against company. Individual defendants ordered discharged. (F. D. C. No. 24078. Sample Nos. 93899-H, 93900-H, 93941-H to 93945-H, incl., 94163-H, 28402-K.)

INFORMATION FILED: January 22, 1948, Eastern District of Missouri, against V. Viviano & Brothers Macaroni Manufacturing Co., a corporation, St. Louis, Mo., Frank P. Viviano, president, and Peter R. Viviano, vice-president.

ALLEGED SHIPMENT: On or about August 8, 12, 15, and 20, 1947, from the State of Missouri into the States of Colorado, Arkansas, Tennessee, and Illinois.

LABEL, IN PART: "De Luxe Elbow Macaroni," "Belmont Brand * * * Elbow Macaroni," "Gragnano De Luxe Style * * * Mezzani," "Pure Alimentary Paste Genova Style," "Viviano * * * Baby Pastina," or "Gragnano De Luxe Style * * * Magliettine Elbow Macaroni [or "Spaghetti"] "CAP Brand Med. Egg Noodle."